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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/846,766

04/30/2001

James Talaric

4-01

4613

23713

7590

05/25/2006

GREENLEE WINNER AND SULLIVAN P C
4875 PEARL EAST CIRCLE
SUITE 200
BOULDER, CO 80301

EXAMINER

NUTTER, NATHAN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,766

Applicant(s)

TALARIC ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26,28,29 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26,28,29 and 47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

In response to the amendment filed 13 April 2006, the rejection of claims 25 and 27 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, is hereby expressly withdrawn.

Declaration Under 37 CFR 1.312

The Declaration of James Barber, filed 31 October 2005, has been considered. The Declaration is not deemed to have any value determinative of the patentability of the instant claims since the "polymer mix" referred to at the second full paragraph of page 2 thereof is neither disclosed, taught or suggested, nor is the term a proper art-recognized term to which members are readily known. The assertions of the Declaration do not seem well-founded since the formulations of what "Uncolored original" and "Uncolored original with added pigment," are neither disclosed, nor taught. The pigments employed are not shown, as well. Declarant Barber does not appear to be making a proper comparison since it cannot be ascertained what is actually being compared. The Declaration will be given no weight in determining the patentability of the instant claims.

Further, in response to Applicants' contention that this Declaration "in combination with the Declarant's previously-submitted Declaration (dated October 21, 2003), showed that there was "a long-felt need in the art for retail mannequins and other display forms having a uniform color throughout," it is first pointed out that the instant

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claims are drawn to molded articles, and not "mannequins and other display forms," *per se*. Both Declarations are administered by co-inventor Barber. Neither Declaration is deemed sufficient evidence to show any such "long-felt need" by the industry that uses mannequins. Nothing conclusive can be made from the assertions of the Declarations. There is nothing of evidence to show such "need" such as newspaper articles, trade references, industry testimonials, etc. accompanying either Declaration. As such, nothing of patentable weight can be afforded these assertions based upon these Declarations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-29 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts (US 3,655,861), Moody (US 6,200,233), Kiyosawa et al (US 6,187,514), in further view of Hashimura et al (US 6,494,543) and Philpot et al (US 6,352,485).

All of the references cited, Roberts (US 3,655,861), Moody (US 6,200,233), Kiyosawa et al (US 6,187,514), Hashimura et al (US 6,494,543), and Philpot et al (US 6,352,485), teach the manufacture of hollow articles comprising a "thermosetting elastomeric material" with a "dye or pigment other than carbon particles mixed therein, as recited and claimed herein.

The reference to Roberts (US 3,655,861) shows the use of thermoset elastomers, including polyurethane rubber, that may be rotational molded to produce hollow articles, including furniture, as recited and claimed herein. Note column 3 (lines 4-33), column 11 (lines 14-33), column 13 (lines 1-8) for the polyurethane rubbers employed. The reference suggests the inclusion of pigments at column 13 (lines 35 et seq.) in their formulations. The patent employs a rotational molding process to produce hollow articles, as recited herein. Note column 4 (lines 51-66) and column 14 (lines 24-33).

The patent to Moody (US 6,200,233) teaches the full incorporation of a pigment into the elastomer that makes up the article. Note the paragraph bridging column 10 to column 11 and column 12 (lines 13-33). At column 10 (lines 28-47) the reference shows the employment of a thermosetting polyurethane elastomer, as claimed herein. The patent shows cavitation of the article at column 12 (lines 34-52) which embraces the concept as defined by applicant at page 10 of their response.

The patent to Kiyosawa et al (US 6,187,514) teaches the manufacture of a hollow article that may be produced from a thermosetting polyurethane elastomer, as recited. Note column 3 (lines 40-45). The paragraph bridging column 3 to column 4 shows the hollow article as defined by applicant. The addition of a colorant is shown at column 4 (lines 17 et seq.).

The reference to Hashimura et al (US 6,494,543) is relied upon solely to show the use of organic pigments and dyes as suitable for inclusion into an elastomeric composition useful to manufacture hollow articles. Note column 2 (lines 48-51).

The reference to Philpot et al (US 6,352,485) shows the production of hollow articles, including furniture, that may comprise urethane resins. Note the paragraph bridging column 3 to column 4 and column 5 (lines 35-44). The reference is clear at column 5 (lines 18-34) and especially at column 6 (lines 13-53) that a skilled artisan would know how to manipulate desirable physical characteristics including coloration, as well as "flexibility, strength and density." Further note the paragraph bridging column 6 to column 7 for manipulation of toughness, flex/rebound, and strengthening or stiffness of the manufactured article. Finally, note column 8 (lines 13-24) for processability of the final product.

As such, the references teach the manufacture of hollow articles, from thermosetting polyurethane resins, as herein claimed, to be conventional and known in the art. Inclusion of a colorant or a pigment or dye is shown by the references to be known, including the use of an organic dye or pigment. It would be assumed that the mixing of the polymer and the various additives that may be employed would be uniform. It has not been shown why one would not expect this to be so. The use of rotational molding is taught as suitable for these thermosetting polyurethane elastomers. A skilled artisan would know how to manipulate desirable physical characteristics as shown by the references. Although the references, taken singly do not disclose all of the features of the instant claims, taken together they show that the features are all known and can be manipulated for desired effect. Nothing unexpected has been shown on the record regarding any of the features claimed. As such, the

manufacture of the hollow articles, using a colorant, as claimed, is deemed to be conventional and shown by the combination of references cited.

Response to Arguments

Applicant's arguments filed 13 April 2006 have been fully considered but they are not persuasive.

Applicants' attention is drawn to the fact that the instant claims are drawn to an article whose patentable significance lies in the composition. As such, the contention that the references are drawn to non-analogous art is deemed to be misguided and incorrect. The references are drawn to molding compositions and articles produced therefrom, just as herein recited and claimed. With regard to the reference to Roberts, the argument that the reference teaches an "outer 'skin' of very thin thermoplastic material that is completely filled with a rigid thermosetting material," is irrelevant since the reference shows the hollow body, as herein claimed, in the first step. See claim 1. nothing is proffered by the Examiner to extend the teachings of Roberts past this first step to show the thermoplastic hollow body. The reference teaches the hollow rotational molded article, as claimed. At that point, the reference is relied upon. With regard to Moody, the size of the article molded is not deemed relevant, nor have any dimensions been recited as applicants' arguments would suggest. Nothing is recited herein with regard to the rigidity of the produced article. Molded articles share the feature of being molded. The skilled artisan would know to look at all possible molding compositions to produce objects having the features desired. Applicants' assertion "there is no disclosure that the pigment is uniformly incorporated" flies in the face of the reference

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showing that the pigment is fully incorporated without specifying why the semantics they choose to interpret the reference differ so much from what is taken for granted in the molding arts. A skilled artisan would desire a molded article having a uniform coloration. The use of speckled, pied, streaked or otherwise oddly colored articles is generally the domain of children's articles, i.e. toys, and is seldom employed otherwise. The production of these articles, whether uniformly colored, streaked, speckled or pied is well within the skill of an artisan to produce. Applicants' speculation of semantics is not agreed with here. With regard to Kiyosawa et al, applicants again resort to allegations of "non-analogous art." The reference to Kiyosawa et al is deemed to be analogous since it is drawn to a "form" as recited herein. It is pointed out that a definition used by applicants serves to define for patentee, as well. As such, the definition of "hollow" as "having a void volume inside" applies to cup shapes. Otherwise, how would we use them to hold liquids? Nothing is recited to show any such "closed hollow object" as alleged by applicants. With regard to Hashimura et al, it is irrelevant whether the colored layer is internal or external and any contention to that fact is absurd. The color is shown as being dispersed through the inner layer. The reference is relied upon to show dispersion of the colorant through the resin. Location of that resin constituent is not relevant and applicants' arguments pertaining to such are not well-founded. With regard to Philpot et al, it is further pointed out to applicants that all of the claims are not drawn to "rotational molded articles." The reference shows moldings, including the hollow perform, which, itself, is molded. All other aspects of the molding process are shown as conventional.

As such, applicants have not shown why the references do not teach the conventionality of the claimed subject matter. Claim 1 clearly does not recite rotational molding, as applicants wish to employ to confer patentability on the claims. The articles, as claimed, are deemed disclosed as conventional by the combination of references.

The references cited are all analogous to the molding arts.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

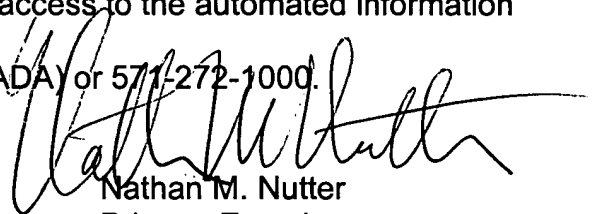
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

23 May 2006